

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7440

Petition of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc., for amendment of their certificates of public good and approvals required under 10 V.S.A. §§ 6501-6504 and 30 V.S.A. §§ 231(a), 248 & 254, for authority to continue after March 21, 2012, operation of the Vermont Yankee Nuclear Power Station, including the storage of spent nuclear fuel

REPLY BRIEF OF THE
VERMONT DEPARTMENT OF PUBLIC SERVICE

August 7, 2009

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INTRODUCTION

In its initial Brief¹ (DPS Brief) filed July 17, 2009, the Department of Public Service (DPS or the Department) set forth a comprehensive analysis of the evidentiary record and legal authority relevant to the Public Service Board's (the Board) decision in this proceeding. Many of the issues raised by other parties in their initial briefs were anticipated by and directly addressed and rebutted by the Department in the DPS Brief. Nothing in the briefs of the other parties merits the Board's support of any position advanced by those parties that is not consistent with that advanced by the Department.

Accordingly, rather than engage in repetition by responding to those positions asserted by other parties which are effectively rebutted by the DPS Brief, the Department will focus on certain issues raised by Petitioners, Vermont Electric Cooperative, Vermont Public Interest Research Group, Conservation Law Foundation and New England Coalition in their initial briefs which are particularly inaccurate, incorrect, or otherwise unsupported. Silence by DPS on any issue that was previously raised in the DPS Brief, including its recommended conditions, should therefore not be construed as a concession by the Department on any such issue. The Department stands by and continues to assert all positions on all issues set forth in the DPS Brief and incorporates by reference all proposed findings, conclusions and conditions as if fully set forth herein.²

¹ All abbreviations used in the DPS Brief will have the same meaning when utilized in the Department's reply brief.

² At the end of this Reply Brief, the Department will provide an amendment to its proposed finding 64 in the DPS Brief to conform it to the testimony it relied upon.

I. Petitioners' Brief³

A. Petitioners incorrectly correlate VY output and Vermont's carbon footprint.

The Petitioners rely significantly on the idea that continued operation of VY will assist Vermont in maintaining the lowest carbon footprint in the country in support of their argument that relicensing the plant will promote the general good as required by 30 V.S.A. § 248(a)(2).⁴ However, Petitioners are incorrect that relicensing the plant will per se result in a contribution to Vermont's low carbon footprint. This is because the state's carbon footprint is determined not by the presence of low emissions generators in the state, but by the generation sources that are utilized in the portfolios of Vermont's distribution utilities. At this point, there is no PPA between Petitioners and any Vermont utilities covering the proposed period of extended operations. If that continues to be the case, then it makes little difference to Vermont's carbon footprint if VY continues to operate or not. Given Petitioners' stance⁵ to date on a PPA with Vermont utilities, the Board should not assume that VY power will be purchased by Vermont utilities unless and until a contract is negotiated and submitted into the record,

³ The Department's Reply Brief focuses on the initial brief of the Petitioners. The Petitioners also filed a separate document entitled Proposal for Decision of Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. dated July 17, 2009. The criticisms advanced by the Department with respect to Petitioners' Brief apply equally to the corresponding assertions in the proposal for decision.

⁴ See, Petitioners' Brief beginning at page 4.

⁵ Petitioners have continuously taken the position that they need not provide a PPA to Vermont utilities with any incremental value beyond that which was already negotiated in Docket 6545 in the form of the RSA.

and the Board must therefore reject VY's reasoning with respect to the plant's output and Vermont's carbon footprint.

B. 30 V.S.A. § 248(a)(2) vests great discretion in the Board to determine what is required to promote the general good.

Petitioners claim that a favorable PPA with Vermont utilities is not necessary for the proposed relicensing to promote the general good because the plain language of 30 V.S.A. § 248(a)(2) does not contain a requirement for such a contract. This argument is without merit and must be rejected by the Board.

The Petitioners' argument essentially comes down to a claim that once a project is found to have met the criteria of subsection (b), that it will by definition promote the general good under (a)(2) and the Board is required to make such a finding.⁶ Petitioners are incorrect.

The Vermont Supreme Court has already recognized that the requirement for a project to promote the general good under section 248 is separate and apart from the findings required under subsection (b). In re UPC Vermont Wind, 2009 VT ___, 969 A.2d 144, ¶¶ 6-7. In UPC, the Board made an express finding that a proposed wind project would provide an economic benefit to the state as required by subsection (b)(4), even without favorable, stably-priced PPAs with Vermont utilities. However, the Board went on to condition the issuance of a CPG on further negotiations aimed at obtaining favorable PPAs between the developer and Vermont utilities because, absent such efforts, the proposal would not promote the general good as required by 30 V.S.A. § 248(a)(2). The Vermont

⁶ Petitioners' Brief at 25.

Supreme Court upheld this approach recognizing that the ultimate question was whether the project would promote the general good, a question broader and more generalized than the requirement for economic benefit under subsection (b)(4). *Id.* at ¶¶ 6-7. Further, “given the project’s ‘not insignificant impacts,’ it was fully within the Board’s § 248(a)(2)(B) purview to condition approval” of the CPG “so as to enhance the project’s benefit to the utility ratepayers at large.” *Id.* at ¶ 10. See also, In re Twenty-Four Elec. Utils., 160 Vt. 227, 233 (1993) (recognizing general good and economic benefit as two separate criteria). In other words, affirmative findings under the subsection (b) criteria do not compel a finding under (a)(2) that a project will promote the general good and the Board need not make such a finding in the absence of a favorable power contract for Vermont utilities.

Petitioners’ argument that the DPS position renders 248(a)(2) a “standardless” statute is similarly without merit.⁷ Unlike the situation in the Handy case relied on by Petitioners, the standard here is contained in the plain language of the section: a proposal under section 248 must “promote the general good” of the state of Vermont. 30 V.S.A. § 248 (a)(2). In Handy, there was no standard at all and the town selectboard was free to dictate for any reason whatsoever whether old ordinances or newly noticed or adopted but not yet effective ordinances would apply to zoning applications, raising the specter of favoritism or discrimination. In re Handy, 171 Vt. 336, 345-48 (2000). In the instant case, the statute in fact does specify the standard under which a proposed project must be judged.

Further, the Court in Handy recognized both that a general standard is sufficient and that

⁷ Petitioners’ brief at 23.

standards can be derived from precedent. *Id.* at 348. In the instant case, both of these alternatives exist. As mentioned above, the standard is promotion of the general good and is contained within the text of the statute. Additionally, there is sufficient precedent examining what promotion of the general good means so that Petitioners are not unfairly disadvantaged like the zoning applicants in *Handy*. The Board has consistently stated that in analyzing what constitutes promotion of the general good under 248(a), it must review both the burdens and benefits of a proposed project and determine that the benefits outweigh the burdens.

For example, in both Dockets 7156⁸ and 7250,⁹ the Board found that appropriate PPAs between the developers and Vermont utilities, or at the least a showing that such PPAs were not achievable after good faith negotiations, were necessary to account for the unique burdens imposed by the proposed wind generation facilities for the projects to promote the general good.¹⁰ *See*, Docket

⁸ *Petition of UPC Vermont Wind, LLC, for a Certificate of Public Good, pursuant to 30 V.S.A. Section 248, authorizing the construction and operation of a 52 MW wind electric generation facility, consisting of 26 wind turbines, and associated transmission and interconnection facilities, in Sheffield and Sutton, Vermont.*

⁹ *Petition of Deerfield Wind, LLC, for a Certificate of Public Good authorizing it to construct and operate up to a 45 MW wind generation facility, and associated transmission and interconnection facilities, comprised of between 15 and 24 wind turbines on approximately 80 acres in the Green Mountain National Forest, located in Searsburg and Readsboro, Vermont, with turbines to be placed both on the east side of Route 8 on the same ridge lines as the existing GMP Searsburg wind facility (Eastern Project Area), and along the ridge line to the west of Route 8 in a northwesterly orientation (Western Project Area).*

¹⁰ Petitioners, without explanation or support, claim that these cases do not give rise to sufficient guidance for merchant plants seeking to construct facilities in Vermont because they are “recent.” Petitioners offer no guidance on how old a case must be before it will qualify under *Handy*. *See*,

7156, Order of 8/8/07 at 40; see also, Docket 7520, Order of 7/17/09 at 3.

Perhaps even more telling, the PPA agreed to by Petitioners in Docket 6545¹¹ was a central component of a finding of general good in the sale of the plant to Petitioners.¹² See, Docket 6545, Order of 6/13/02 at 6, 8 (discussing PPA and its cost provisions as one of six central components of the transaction supporting a finding of general good). The reasoning advanced by the Board with respect to the Docket 6545 PPA is similar to the reasoning being advanced by the Department on the need for a PPA under the general good standard of this proceeding. Simply put, the Petitioners in this proceeding had ample notice of what standards the Board would apply in determining if continued operation would promote the public good. The fact that Petitioners disagree with the Department does not mean that the standards were unknown to them at the time they filed their petition.

Additionally, under section 248 the Board is engaging in a legislative, policy-making process in

Petitioners' Brief at fn. 107. In any event, the Board has consistently described the benefits versus burdens approach it utilizes in making determinations of general good under section 248.

¹¹ *Investigation into General Order No. 45 Notice filed by Vermont Yankee Nuclear Power Corporation re: proposed sale of Vermont Yankee Nuclear Power Station to Entergy Nuclear Vermont Yankee, LLC, and related transactions.*

¹² Docket 6545 was decided under 30 V.S.A. § 231. However, the point remains valid. There are numerous sections in Title 30 under which the Board is required to make a finding of general good. Examples include §§ 102(b) establishment of corporation to promote general good; 106 ownership of stock in other corporations must promote general good; 107 acquisition of control of utility company must promote general good; 108 issuance of bonds by utility must be consistent with general good; and, 109 sales and leases must promote general good. Just like its precedent under section 248, the Board has developed guidance under each of these sections so that utilities know what evidence must be presented in order to satisfy the general good requirements established by the legislature.

which it must utilize its discretion in reaching its ultimate determination. UPC Vermont Wind, 969 A.2d 144 at ¶ 2. Moreover, Board proceedings are sufficient to protect the rights of parties when they are “in accord with due process principles” and, in particular, where the parties are provided an adequate opportunity to prepare and respond to issues raised in the proceeding. Petition of Green Mtn. Power Corp., 131 Vt. 284, 293 (1973). Parties must be provided an opportunity for hearing after reasonable notice, 3 V.S.A. § 809(a), and an opportunity to respond and present evidence and argument on issues involved in the proceeding. 3 V.S.A. § 809(c). There can be no argument but that Petitioners had ample notice and opportunity that the existence of a favorable PPA would be an issue under the general good requirement.¹³ Petitioners made their case and the Department and others have made theirs. Due process has been respected and the Board must now exercise its discretion based on its particularized expertise and informed judgment and make a determination on the issue presented. UPC Vermont Wind, 969 A.2d 144 at ¶ 2.

Lastly, Petitioners’ statutory construction argument should also be rejected by the Board. The simple fact of the matter is that section 248 requires a distinct finding under (a)(2) that a proposal promotes the general good. As determined by the Vermont Supreme Court this finding is separate and apart from the required findings under subsection (b). UPC Vermont Wind, 969 A.2d 144 at ¶¶ 6-7; Twenty-Four Elec. Utils., 160 Vt. at 233. If the legislature had meant to equate affirmative findings under subsection (b) with a finding of general good, the statute would have been written to include

¹³ See e.g., tr. 7/10/08 at 44-45, Docket 7440 Prehearing Conference.

language to that effect (e.g. “The Board shall find that the proposed project promotes the general good if it finds the following . . .). However, such is not the case and Petitioners’ interpretation renders subsection (a)(2) meaningless in violation of the legislative intent manifested in the plain language of section 248. See, State v. Brennan, 172 Vt. 277, 280 (2001) (citing State v. Yorkey, 163 Vt. 355, 358 (1995)).

For the foregoing reasons, the Board should reject Petitioners’ arguments that the promotion of the general good requirement in section 248 cannot require anything more than affirmative findings under the subsection (b) criteria, and deny the relief requested in the petition absent a favorable PPA between Petitioners and Vermont distribution utilities.

C. The record evidence does not demonstrate that a favorable PPA is available.

Petitioners erroneously claim that record evidence shows a favorable PPA is available for Vermont utilities because the value of the RSA can be used to offset what would otherwise be market rates.¹⁴ The argument is without merit and should be rejected by the Board.

Petitioners contend that a favorable PPA can be realized by monetizing an expected value from the RSA and applying it to reduce contract rates below anticipated market prices. While this is a theoretical possibility, it is really nothing more than a reworking of the status quo and provides no value to Vermont ratepayers in connection with the relicensing application. The value of the RSA, whatever it

¹⁴ Petitioners’ Brief at 26. Additionally, at footnote 66 Petitioners mischaracterize the DPS position on promotion of the general good. The Department clearly stated that without a favorable PPA that provides incremental value beyond that which may be realized from the already-accounted for RSA, Petitioners have failed to make a sufficient showing under 30 V.S.A. § 248(a)(2).

may be, was already accounted for in the Board's determination of general good in the sale of the plant to Petitioners and it therefore cannot be counted again in this proceeding for the same purpose. Any Vermont-related value generated by the RSA already belongs to the ratepayers of CVPS and GMP and Petitioners' proposal does nothing more than repackage an existing obligation.¹⁵ Such a contract is no more "favorable" than what Petitioners already must provide and is insufficient to promote the general good.¹⁶

D. The Board should adopt the DPS proposal on decommissioning, spent fuel management and site restoration funding.

The Board should adopt the DPS recommendation on periodic funding reviews to ensure that the decommissioning trust fund is sufficient to complete decommissioning, site restoration and to fund all reasonably anticipated costs of spent fuel management upon cessation of operations in 2032,¹⁷ because

¹⁵ Oddly, Petitioners argue the Board should account for the anticipated value of the RSA when analyzing economic benefit, while at the same time they urge the Board to find that a favorable PPA is available through a mechanism that would *eliminate* the RSA in its entirety.

¹⁶ Petitioners also fail to address certain practical difficulties stemming from their proposal. For example, what happens if the price set in the contract ends up higher than market price? In that case, CVPS and GMP would be worse off than they would be simply leaving the RSA intact and purchasing at market rates. Similarly, it is unlikely the Petitioners would agree to a monetized value sufficient to satisfy the other parties given the testimony of witness Thayer that capacity revenues are not included in the RSA and the testimony of witness Wiggett that implies that only 55% of any RSA payments would go to Vermont. In effect, Petitioners' proposal could very likely reduce the benefits to which Vermont is already entitled and is therefore potentially contrary to the general good.

¹⁷ While this section focuses on the periodic fund review proposal of the DPS, the Board should also adopt the other financial assurance conditions proposed by the DPS for the reasons set forth in the DPS Brief.

the position being advanced by Petitioners raises the very real possibility that the plant will be placed into SAFSTOR in 2032.

Petitioners are candid about the possibility that the fund will be insufficient in 2032, and if so, their intended use of SAFSTOR to allow the fund to grow after operations cease.

If the VY Station operates for an additional twenty years, the Decommissioning-Trust Fund will be allowed to grow during that time, substantially *increasing the probability that there will be sufficient funds in 2032* to undertake immediate decommissioning, or DECON, of the VY Station.¹⁸

The NRC, Which Has Exclusive Jurisdiction Over Radiological Decommissioning, Will Ensure Safe Decommissioning of the VY Station and Will Permit the Use of SAFSTOR, If Necessary, Prior to the Site's Release for Unrestricted Use.¹⁹

The TLG study examines eight alternative decommissioning scenarios . . . relevant to this docket, four examine SAFSTOR and DECON alternatives assuming a 2032 shutdown. The TLG study complies with applicable federal requirements . . .²⁰.

Petitioners imply that the NRC's jurisdiction over the radiological health and safety aspects of decommissioning prevents the Board from adopting the DPS proposal. This is without merit. The DPS proposal for funding reviews is aimed at ensuring there are no unduly adverse economic consequences at the time the plant ceases commercial operations. As set forth in the DPS brief, SAFSTOR has more severe short-term economic consequences than DECON and results in the site not being available for

¹⁸ Petitioners' Brief at 40 (emphasis added).

¹⁹ Petitioners' Brief at 43 (section heading).

²⁰ Petitioners' Brief at 44 (footnotes omitted).

redevelopment for many years, resulting in long-term negative economic impacts as well.²¹ States retain their traditional authority over economic concerns associated with nuclear plants and the Board is free to address such concerns with appropriate conditions. Pacific Gas and Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190, 212 (1983) (states continue to exercise their traditional authority over issues of need, land use, ratemaking etc.).

Additionally, absent the DPS condition, there is very little clarity on financial assurances for both spent fuel management and site restoration. As witnesses from Entergy acknowledged, the NRC's decommissioning fund oversight is concerned only with the amount needed to radiologically decommission the site.²² It is not concerned with spent fuel management costs²³ or site restoration

²¹ DPS Brief at 36.

²² See e.g., tr. 5/19/09 at 57 (Cloutier). Petitioners assert that a recent letter from the NRC to eighteen reactor licensees regarding shortfalls in their decommissioning trust funds is evidence that the Board should simply defer to the NRC's oversight. Petitioners' Brief at 83. However, two issues are not mentioned by Petitioners. First, the DPS understands that the shortfalls identified by the NRC, including one for VY, are based only on radiological decommissioning cost estimates from the NRC formula. The shortfalls would be significantly greater if SNF management costs were included. Second, once a licensee has an approved site-specific decommissioning cost study, the licensee is permitted under NRC regulations to propose a period of SAFSTOR to cover such a shortfall. 50 C.F.R. § 50.75(e)(1)(ii). In short, Petitioners could address a funding shortfall with, for example, a parental guarantee, until such time as their site-specific cost study is approved, then seek to withdraw that guaranty and rely on SAFSTOR instead.

²³ Adequacy of funding review for Petitioners' spent fuel management plan is different from the adequacy of funding review of the decommissioning trust fund to address radiological decommissioning. See, 10 C.F.R. § 50.54(bb). In fact, Petitioners' proposal to use money from the decommissioning trust fund to pay for spent fuel management costs requires an exemption from the NRC's prohibition that such funds only be used for decommissioning. Exh. JKT-3 at 4, 10 C.F.R. § 50.12. If Petitioners intend to seek an exemption and rely on money in the decommissioning trust fund to pay for post-

costs. Further, it is not currently based on a site specific study for the VY facility but is based on costs derived from a formula. The significant difference between the NRC derived cost estimate and the TLG estimate²⁴ results in part from the non-site specific approach undertaken by the NRC and in large part because the NRC number does not take into account SNF management and site restoration costs, which are included in the TLG study. Given the very real possibility of SAFSTOR in 2032 and the negative economic consequences that would result, the lack of specificity in the NRC process, and its exclusion of SNF management and site restoration costs from its review, relying on the NRC to protect Vermont's economic and land use interests is quite simply, a bad policy decision. Vermont has the jurisdictional ability to regulate land use and economic issues and the Board should exercise that jurisdiction to protect Vermont's interests.

E. The Board should not give any weight to Petitioners' assertions about recovering damages from the DOE.

Petitioners continue to assert that the Board should give weight to its expected damages recovery from DOE for its breach of the standard contract, apparently as assurance that there will be funds available to pay for post-shutdown SNF costs. The Board, however, should not rely on the potential recovery of damages from the DOE as assurance that there will be sufficient funds to pay for

shutdown SNF management costs beginning in 2032, it will only increase the likelihood that a period of SAFSTOR will be necessary for the fund to grow to a sufficient level before decommissioning is allowed to commence.

²⁴ The most recent NRC-derived amount is \$513.8 million while the amount in the most recent TLG estimate ranges from \$732.9 to \$983.8 million. Exh. NEC-Cross-7 at Attachment 4; tr. 5/21/09 at 184 (Thayer).

SNF management costs unless and until such damages are awarded, tendered to Petitioners and sequestered into a bankruptcy remote account dedicated to that purpose.

Petitioners claim that the Board need not concern itself with costs incurred during the period of extended operations because they will be paid from operating revenue. Rather, Petitioners contend that the only costs the Board need be concerned with are costs incurred post-shutdown.²⁵ Petitioners further contend that the DOE's liability has already been established and the only issue remaining is how large the damages award from DOE will be.²⁶

The Board should reject this line of reasoning because there has been no formal commitment from Petitioners to apply the DOE damages recovered to the cost of SNF management, because to date the DOE has only been found liable for fuel burned during an initial license period, and because it is less than clear that the DOE will be liable for costs attributable to fuel burned during the period of extended operations.²⁷

Further, Petitioners, citing Exhibit DPS-11, incorrectly imply that the NRC will allow credit for expected damages from DOE in assessing fund adequacy for SNF costs as soon as Petitioners provide the NRC with some additional information.²⁸ The Department views the contents of Exhibit DPS-11

²⁵ Petitioners' Brief at 72-73.

²⁶ Petitioners' Brief at 74.

²⁷ See DPS Brief at 23-26.

²⁸ Petitioners' Brief at 79.

far differently than Petitioners. The exhibit is a request for additional information from the NRC to Petitioners regarding their April 1, 2009 updated SNF plan filed pursuant to 10 C.F.R. § 50.54(bb). In the updated plan, Petitioners removed a proposed \$60 million deposit into the fund and instead proposed utilization of anticipated DOE damages to cover a shortfall in the fund amount. In the request the NRC stated:

Since VY's analysis indicates sufficient funds are not available to address the decommissioning costs and spent fuel management costs without the DOE's reimbursement, what mechanism has VY established to address the funding shortfall since the liability judgment does not guarantee the payment of damages in any certain amount or any payment date, and it could be overturned?²⁹

The NRC clearly is not impressed with Petitioners' reliance on a potential recovery from the DOE, even for costs that have been incurred and for which liability appears to have been determined. The NRC is not asking for additional information on the potential DOE damages award, it is asking for information on an additional mechanism for funding assurance because reliance on the DOE damages award is apparently not acceptable. And, it should be noted that the NRC here is concerned only with SNF costs for fuel burned during the initial operations period. To think it would be more likely to accept the possibility of a future damage award for fuel burned during an extended license period, with all of the legal uncertainties surrounding such a claim, is patently unreasonable.

²⁹ Exh. DPS-11 at RAI 1, page 2.

F. The Board should not rely on the NRC to seek recovery of decommissioning funds from affiliate companies if the fund proves inadequate.

The Board should give no weight to witness Thayer's testimony, quoted in Petitioners' Brief, "that the NRC would work its way up the chain and there would be parent responsibility" in the event of a funding shortfall.³⁰ Setting aside the practical difficulties associated with the NRC suing to pierce the corporate veil on its way up the chain of a multi-tiered corporate structure such as that employed by Entergy, and whether the NRC's interests in such litigation would also be protective of the state's interests, the argument in Petitioners' brief in no way supports witness Thayer's assertion that the NRC could "go up the chain" and impose "parental responsibility." What Petitioners' brief shows is only that the NRC is willing to seek compensation from co-licensees, in this case ENO. In short, the Board should take no comfort from Petitioners' claim that the NRC will provide sufficient remedy in the form of parental liability in the event of a funding shortfall.

G. Petitioners' position on DECON is inconsistent with the Docket 6545 MOU.

Petitioners erroneously assert that decommissioning under the Docket 6545 Sale MOU can be delayed until such time as the site is no longer used for non-nuclear generation purposes.³¹ Consistent with the reasoning set forth in the DPS Brief, the Board should clarify that under the Docket 6545 Sale MOU it is only site restoration that may be delayed if Petitioners use the site for non-nuclear

³⁰ Petitioners' Brief at 83 (quoting witness Thayer at tr. 5/21/09 at 58).

³¹ Petitioners' Brief at 50.

commercial or industrial purposes once nuclear generation ceases.³² Petitioners' attempt to bring the NRC's authority into the discussion at this late date by suggesting that decommissioning cannot proceed without NRC approval is without merit. According to Petitioners' witness,³³ the NRC will prevent the commencement of decommissioning if funding is inadequate to complete the job. Adopting the DPS' recommendations on funding adequacy and parental guarantees will alleviate this concern. And in any event, as a procedural matter the Department's recommended condition cannot bind the NRC as the NRC is not a party to the Docket. Petitioners' concern is therefore misplaced.

H. The Board should incorporate all applicable conditions into any CPG issued in this proceeding.

The Board should accept the DPS recommendation that all applicable conditions be incorporated into any CPG issued in this proceeding, including those from prior proceedings that are being renewed in this Docket. This is important to remove any uncertainty about what is expected of Petitioners, and any possible successors and assigns should the Enexus transaction, or some other sale of assets occur, during an extended period of operations. It is possible that some previous conditions could be interpreted to continue into an extended operations period, but not apply to the operations themselves. For example, Petitioners are subject to an existing condition to use their commercial best efforts to remove SNF from the site in a reasonable manner and as quickly as possible.³⁴ Because that

³² DPS Brief at 37-38.

³³ Tr. 5/21/09 at 145-46 (Thayer).

³⁴ Exh. DPS-MAM-3 at ¶ 7.

condition was related to the sale case, it is possible to interpret it as only applying to SNF generated prior to March 21, 2012. Additionally, if all conditions are not in the CPG, it could lead to further litigation about what conditions are to be included in the event of a future sale of the plant by Petitioners. This type of uncertainty should be removed where the state is being asked to consent to an additional 20 years of VY operation.

II. Vermont Electric Cooperative Brief

The Board should reject VEC's contention that it is legally entitled to share in any benefits that flow to Vermont as a result of the RSA because it voluntarily sold its interest in VYNPC.³⁵

In spite of VEC's efforts to portray itself as having been somehow wronged in the lead up to the execution of the Docket 6545 Sale MOU, the simple fact of the matter is that VEC made what it believed at the time to be an economically rational decision to sell its shares in VYNPC.³⁶ VEC was

³⁵ VEC also alleges that the petition fails to satisfy statutory requirements under "30 V.S.A. § 254(b)(1)(A) in that the DPS has failed to identify and consider the risks and costs of a failure to allocate the benefits of the RSA to all ratepayers in the state." VEC Brief at 2. VEC's allegation is unsupported. First section 254 requires a public engagement and fact finding process and directs the Board to consider "the objectives of the [Act 160] studies to be arranged by the department, the objectives of the [Act 160] public engagement process as a whole, and the general and specific issues that the [Act 160] studies are required to address . . ." as specified in 30 V.S.A. § 254(b). 30 V.S.A. § 254(c). The section does not require any specific findings by the Board beyond what is required in sections 231 and 248. Second, the Department did not consider risks and costs of a failure to allocate the RSA benefits on a statewide basis because the Docket 6545 Sale MOU requires a different result. Nothing in the statute directs the Department to assess the risks and benefits of an event that is prohibited by the language of a Board-approved document.

³⁶ Q. Right. So in their best interest they decided they would rather get out of VYNPC than receive a \$8,000 a year dividend --

A. That's correct.

never forced to sell its VYNPC shares and in fact as an owner was receiving an annual dividend as long as it held them.³⁷ If VEC had remained an owner of VYNPC, then it would be entitled to a pro rata share of the Vermont value in the RSA just as CVPS and GMP are entitled to a share. To put it bluntly, VEC today wishes it had not sold its shares and would now like to reverse the consequences of what in hindsight appears to have been a bad decision. It is telling that VEC never raised this issue until the potential value of the RSA became known. VEC remained silent for almost seven years after the Board approved the Sale MOU in Docket 6545, speaking up only when it appeared that significant dollars might be at stake.

Additionally, it is unclear to the Department how the Board would grant the relief VEC seeks; that is, conditioning issuance of a CPG to Petitioners on a statewide sharing of the RSA revenues. Petitioners' only obligation under the RSA, which has previously been reviewed and approved by the Board, is to tender any shared revenues to VYNPC. Once that occurs, Petitioners have performed their obligation. In order to provide the relief requested by VEC, the Board would have to direct Petitioners to tender shared revenues to entities other than VYNPC in violation of the previously-approved MOU, or require VYNPC, which is not a party to this proceeding, to distribute those revenues in a manner not envisioned by the previously-approved MOU.³⁸

Tr. 6/1/09 at 62 (LaCapra).

³⁷ *Id.*

³⁸ In the event VEC is asking the Board to modify the terms of the MOU, its proper avenue would be through a motion to alter or amend the judgment issued in Docket 6545, the time for which is

Lastly, since the Board has already approved the RSA, and ultimately its allocation of the Vermont share of RSA funds to the ratepayers of CVPS and GMP, VEC's proposal would take funds that belong to those ratepayers and reallocate them to ratepayers of other distribution utilities in Vermont. CVPS and GMP ratepayers would in effect be forced to provide a rate subsidy to customers of other utilities without any appropriate justification.

III. Vermont Public Interest Research Group Brief

A. VPIRG misapplies Board precedent in its argument for admission of the NAS and Beyea reports.

In the DPS Brief, the Department raised no objection to the admission of the NAS report, or to the admission of the Beyea report *“for the limited and sole proposition that if there was a loss of coolant in the spent fuel pool, and if that loss of coolant resulted in a fuel pool fire, that there would exist the potential for severe negative economic impacts as a result.”*³⁹ It appears from the VPIRG Brief that VPIRG seeks to utilize the Beyea report as a basis for arguing the probability of a terrorist attack or loss of coolant fuel pool fire in addition to the limited proposition recited above.⁴⁰ The Department objects to that usage.

long past, *see*, V.R.C.P. 59 and in any event VEC was not a party at the time of judgment. A motion for relief from judgment under V.R.C.P. 60 would likewise not be appropriate since VEC withdrew as a party to Docket 6545 after it sold its VYNPC shares. It should also be noted that the DPS is a party to that previously-approved MOU and objects to its modification in this proceeding.

³⁹ DPS Brief at 69 (emphasis in original).

⁴⁰ *See e.g.*, VPIRG Brief at 2. ENVY has objected to VPIRG's attempt to bring to the Board's attention the "likelihood" of the harm resulting from a spent fuel pool fire.

“[T]he federal government maintains complete control of the safety and ‘nuclear’ aspects of energy generation . . .”. Pacific Gas & Elec., 461 U.S. at 212. The likelihood of a terrorist attack or a fire resulting from loss of coolant are primarily safety issues within the exclusive purview of the NRC.⁴¹ Accordingly, the Board is preempted from considering these aspects of the Beyea report.

Each of the cases relied upon by VPIRG serves to illustrate the point. In each case, unlike the possibility of terrorist attacks on VY or a loss of coolant fire in the fuel pool, the matters being considered by the Board were fully within its jurisdictional authority. Further, at least two of the cases cited by VPIRG, Dockets 5270⁴² and 5330⁴³ are not helpful to the proposition advanced. In each of those cases the triggering event was known and it was the consequences of that triggering event that the Board was concerned with. In the instant case, the triggering event is speculative and therefore cannot be assumed to give rise to consequences that otherwise would be accounted for in a cost benefit analysis. Because the likelihood of a terrorist attack or a loss of coolant fire are both safety-related questions, they are within the purview of the NRC’s jurisdiction and the Board should not permit use of the Beyea report for any purpose other than the limited one described above.

⁴¹ This is precisely why the state has sought to participate in the resolution of these questions in a federal forum. *See*, Exh. ENVY-Cross-Mullett-1. The Department notes that there are non-safety, purely economic issues associated with the fuel pool, such as maintaining the capability to offload the core to effectuate needed repairs. These non-safety questions are not beyond the Board’s authority.

⁴² *Re: Least Cost Investment, Energy Efficiency, Conservation and Management of Demand for Energy* (4/16/90).

⁴³ *Application of Twenty-Four Electric Utilities* (10/12/90).

B. The conditions proposed by the DPS are within the Board's jurisdictional authority and will ensure that continued operation promotes the general good.

The Board should reject VPIRG's argument that it is without authority to impose the conditions recommended by the DPS because each of the proposed conditions is aimed at properly securing appropriate value for the state and its residents should the Board approve a period of continued operations.

States retain their traditional authority over economic concerns associated with nuclear plants and the Board is free to address such concerns with appropriate conditions. Pacific Gas and Elec., 461 U.S. at 212 (states continue to exercise their traditional authority over issues of need, land use, ratemaking etc.). Each of the conditions recommended by the Department is aimed at securing proper economic benefit or avoiding undue negative economic consequences. For example, maintaining full core discharge capability will prevent extended shutdowns if maintenance is required on the reactor vessel that entails unloading the core, requiring decommissioning in 2032 rather than allowing reliance on SAFSTOR will help avoid a precipitous negative economic downturn and will return the site to a usable condition in a timely fashion, and greenfielding will make the site more desirable for redevelopment.

VPIRG's contentions about the unenforceability of the conditions are not borne out by the cases cited. First, the Westinghouse case is not as broad as VPIRG would have the Board believe. In that case, the state "entered into the Consent Decree *to ensure that Missouri's citizens were safe from the contaminants* at the Hematite Site. Thus, Missouri's Consent Decree is an attempt to

regulate the safety of nuclear contaminants.” State of Missouri v. Westinghouse Elec., LLC, 487 F.Supp.2d 1076, 1085-86 (E.D. Mo. 2007) (emphasis added). In Westinghouse, the very purpose of the state’s action was a preempted attempt to regulate radiological health impacts. Such is not the case with the DPS’ recommended conditions. Second, International Longshoreman is easily distinguished from the proceeding at hand on a similar basis. In that case, Congress had created an exclusive forum for the resolution of disputes under the National Labor Relations Act, thus the state forum itself was without power to act on the questions before it. See, Haudrich v. Howmedica, Inc., 169 Ill.2d 525, 537-39, 662 N.E.2d 1248, 1253-55 (Ill. 1996). The current case is different because Congress has specifically reserved traditional powers to the states with respect to nuclear power plants, including questions associated with need, land use and economics. Pacific Gas and Elec., 461 U.S. at 212 (states continue to exercise their traditional authority over issues of need, land use, ratemaking etc.). As discussed above, the DPS conditions are aimed at issues that are covered by the powers reserved to the states by Congress and the Board has full authority to address those issues.

VPIRG’s argument about CPG revocation being an empty threat is also without merit. If the CPG, and the opportunity to generate the substantial earnings it provides, were not valuable to Petitioners we would not be before the Board in this proceeding. VPIRG’s argument appears to be based on the assumption that if the Board revoked Petitioners’ CPG, they could walk away and take the balance of the decommissioning trust fund with them.⁴⁴ This is incorrect. Radiological

⁴⁴ VPIRG Brief at 25-26.

decommissioning obligations are imposed primarily at the federal level and the decommissioning trust fund cannot be accessed for any purpose other than radiological decommissioning absent NRC permission.⁴⁵

Lastly, the premise underlying VPIRG's arguments undermines its suggestion that the Board deny the Petitioners a CPG pursuant to economic considerations under Pacific Gas & Electric. If the concerns raised by the Department are available to the Board as a basis to deny the Petition based on economic considerations, they are most certainly within the authority of the Board to address with conditions in granting the petition. Id. The Board should reject VPIRG's contradictory analysis.

C. VPIRG incorrectly applied the economic benefit criterion.

VPIRG incorrectly argues that the lack of a PPA makes it impossible to determine if there is an economic benefit associated with an extended operations period. The record establishes that an economic benefit will result from extended operations in the form of jobs, tax revenues, secondary effects and possibly revenues from the RSA and a potential PPA.⁴⁶

Pursuant to statute, the Board is required to find that the Project would result in an economic benefit to the state of Vermont. Section 248 does not require us to quantify exactly how much economic benefit the state would receive from the Project but only

⁴⁵ If the Board is concerned about the funds that will be utilized for SNF costs and greenfielding, it could direct Petitioners to place those funds into a separate, bankruptcy-remote, dedicated account to ensure they are available at the time they are required, whether Petitioners or some other entity hold the CPG. Directing a segregated account for SNF and greenfielding funds would be consistent with federal regulations that prohibit use of money in the decommissioning trust fund for any purposes other than radiological decommissioning.

⁴⁶ See DPS Brief at Findings 104-110.

determine that there will be some economic benefit.

UPC Vermont Wind, Docket 7156, Order of 8/8/07 at 32.

While it is not possible to calculate with certainty what the total expected economic benefit is without additional information on a PPA, this is not fatal to a positive finding under criterion 4. The record contains sufficient evidence for the Board to conclude that extended operations will produce the economic benefit required to meet the standard enunciated in 30 V.S.A. § 248(b)(4).

Additionally, VPIRG has engaged in a serious mischaracterization of the Department's testimony in an attempt to buttress its argument. VPIRG proposes the following finding of fact:

Without such an agreement, it is impossible to ascertain if there will be an economic benefit to Vermont. The other potential benefits, such as the Revenue Sharing Agreement, are too uncertain. Lamont PFT 2/11/09 pp.11-17.⁴⁷

VPIRG appears to be arguing that DPS witness Lamont testified that there is no economic benefit that can be attributed to extended operations because there is not yet a PPA and because the ultimate value of the RSA is uncertain. Mr. Lamont never made such a statement and his testimony that there is an economic benefit could not be clearer. His discussion about the lack of a PPA and the uncertainty surrounding the RSA value cited by VPIRG simply illustrated the point that the ultimate value of the economic benefit could not be precisely quantified.

Q. Will continued operation of Vermont Yankee result in an economic benefit to the state and its residents?

A. Yes, DPS witness Thomas presents evidence of a substantial economic

⁴⁷ VPIRG Brief at proposed finding 28.

benefit that would accrue to the state and its residents from continued operation of the plant. However, quantifying the exact benefit is difficult due to many factors, including the location of the plant, the transient nature of the refueling labor, the uncertainties inherent in the Revenue Sharing Agreement (“RSA”) discussed later in my testimony, and the lack of a purchase power agreement with any Vermont utilities.

DPS witness Thomas discusses a number of benefits of continued operation of the VY plant. In general, these are benefits which are already occurring which would not continue in the absence of the plant. Some of these benefits include employment, tax payments, economic multiplier effects and the impacts from the RSA. He also discusses certain costs imposed upon the state as a result of continued operation of the plant. These include government services costs and impacts on the local housing market. However, the Department concludes that the financial costs imposed on the state by continued operation are outweighed by the financial benefits that will be realized.⁴⁸

The Department’s position, and Mr. Lamont’s testimony, could not be clearer on this point and the Board should not entertain the serious mischaracterization urged upon it by VPIRG.

IV. Conservation Law Foundation Brief

The Board should reject CLF’s argument that the RSA funds should be utilized to fund energy efficiency and renewable energy projects on a statewide basis because the Vermont share of that money has already been targeted to the ratepayers of CVPS and GMP.

While the Department is a supporter of energy efficiency and renewable energy development, the fact is the Vermont share of the RSA funds has already been assigned to a specific purpose. The funds are to be paid to the Vermont owners of VYNPC, and then under basic ratemaking principles,

⁴⁸ Lamont pf. 2/11/09 at 7-8.

flow through to the benefit of those companies' ratepayers in the form of lower rates than would otherwise be the case. The Board has already approved the Docket 6545 Sale MOU, including these terms of the RSA.

If the terms of the RSA were changed in this proceeding as requested by CLF, then the ratepayers of CVPS and GMP would be forced to subsidize energy efficiency and renewable energy efforts throughout the state to the benefit of ratepayers of other utilities. This sort of ratepayer subsidy of statewide efforts more properly originates in the legislature in programs that require support from all ratepayers in the state, not just the ratepayers of a few utilities. Examples of such efforts include the Energy Efficiency Utility, the budget of which is already set to capture all cost-effective energy efficiency in the Vermont market,⁴⁹ and the recent feed-in tariff legislation⁵⁰ designed to establish rates to encourage the development of renewable power projects.

In short, the Department is supportive of efforts to promote energy efficiency and renewable energy projects; however, the RSA funds are already allocated in a manner approved by the Board and there is no appropriate basis for overriding that previously approved purpose.⁵¹

⁴⁹ Tr. 5/27/09 at 81 (Albert); tr. 6/3/09 at 83 (Lamont).

⁵⁰ H.446 of the 2009-2010 legislative session.

⁵¹ Redirecting the funds as requested by CLF runs into the same problems from a legal standpoint as redirecting them per VEC's request. See page 18 *supra*, final paragraph of section II.

V. **New England Coalition Brief**

A. **The CRA was comprehensive and NEC ignores relevant evidence in arguing otherwise.**

The Board should reject NEC's contention that the CRA was not comprehensive enough for the Board to determine the potential for reliable operation through a period of extended operations.⁵²

NEC asserts that the Board cannot rely on the CRA report and recommendations because the "DPS Panel . . . admitted that the NSA report recommendations do not represent a comprehensive list of everything that needs to be done by VY to ensure reliable operation of the facility into the extended license period."⁵³ NEC specifically criticizes the CRA for performing a vertical audit of only six systems and the matrix for not containing the 39 items that are part of the NRC license renewal review process.⁵⁴

In raising these criticisms, NEC is cherry-picking the record and ignoring unchallenged, relevant evidence in the hopes the Board does not perform a complete record review. With respect to the

⁵² NEC Brief at beginning at 51.

⁵³ NEC Brief at 51-52.

⁵⁴ NEC Brief at 51, 53. NEC also suggests that the CRA team did not properly disclose the status of the 39 NRC issues and simply "included them in the CRA as if the information was definitive and reliable." This is a complete mischaracterization of the contents of the report. The report clearly discloses that the information in the tables NEC is referring to was simply copied from a draft plan for license renewal commitments at the NRC, stating, "The programs are listed in Tables 2, 3, and 4, including the current overall status *as indicated by ENVY*." Exh. DPS-Panel-1 at 65. NEC's attempt to convert a full and accurate disclosure by the NSA team into an attempt at obfuscation is disappointing.

number of systems subject to a vertical review, the Panel witnesses testified that additional vertical reviews were not necessary because the audit included horizontal reviews of numerous technical areas as well as programs that cut across all systems, and utilized in-depth reviews that were performed recently by the NRC, resulting in a complete picture of the reliability of the plant.⁵⁵

As to the comprehensiveness of the recommendations list, the Panel stated that to ensure reliability, Petitioners must implement the CRA recommendations, the 39 commitments to the NRC and continue with the daily programs that are already in place and functioning properly for the plant to be reliable. The CRA does not make specific recommendations on the second and third items because the second item is part of the NRC license review process,⁵⁶ and the third item consists of actions at the plant that were found to be functioning correctly. There is simply no basis for including these items in the list of things that need to be addressed pursuant to state authority.

Lastly, NEC completely ignores the fact that the legislature passed Act 189. In its judgment, the legislature determined that if the audit described in that legislation was completed, sufficient information would be available to answer the question of whether the plant would run reliably through

⁵⁵ Tr. 5/28/09 at 151-52 (DPS Panel) (explaining at length in response to questioning by NEC counsel why no additional vertical assessments were necessary for a complete review of plant reliability issues). *See*, Exh. DPS-UV-2, matrix under electrical system work scope, identifying use of NRC EDSFI, CDBIs and other inspections.

⁵⁶ Apparently, NEC believes the Board should be the enforcement arm for the NRC in its license review process with respect to the 39 commitments. NEC also criticizes the CRA for not addressing the issue of reactor embrittlement. NEC Brief at 52-53. The integrity of the reactor vessel is a matter squarely within the jurisdiction of the NRC and any attempt by the state to regulate that area of concern would be preempted.

an extended operations period. The legislature also created the POP to oversee the work done by the Department's consultants. The POP ultimately determined the work scope for the audit and concluded that it met the intent of Act 189.⁵⁷ Thus, the work performed by the Department consultants is consistent with the legislature's determination of what needed to be done to ensure plant reliability.⁵⁸

The Board should reject the selective presentation of evidence by NEC and conclude that the work performed by the NSA team is sufficient for the Board to determine whether the plant can operate reliably for an additional 20-year period.

B. NEC does not appear to understand the use of conditions in Board proceedings.

In several places NEC's brief demonstrates that it either does not understand the use of conditions in Board proceedings, or that it is choosing to ignore that conditions have been recommended to address many of the issues with which it has concerns.

For example, NEC claims that Petitioners will avoid payments under the RSA by selling power to an affiliate or other party below the strike price, regardless of what the market is doing at the time.⁵⁹ This assertion ignores the condition proposed by the DPS designed to ensure that all appropriate value

⁵⁷ Ex. DPS-UV-2.

⁵⁸ In fact, the work performed by the NSA team went beyond the specific requirements of Act 189.

⁵⁹ NEC Brief at 5.

is included in the RSA calculation, even if Petitioners engage in this type of transaction.⁶⁰ Also, on page 59 of its brief NEC states, “Incident after incident shows that they [Petitioners] have not learned from these mistakes, but rather demonstrates that we can only expect more mistakes in the future.” NEC is arguing as if CRA was never conducted, and as if there are no recommended conditions in place to ensure its findings are implemented in a timely fashion.

The Board should reject what is again in reality little more than a selective presentation that ignores relevant, unchallenged record evidence.

C. NEC misrepresents the DPS position on economic benefit.

On page 4 of its brief NEC states:

NEC agrees with both the Department of Public Service (“DPS” or the “Department”) as well as CLF and VPIRG that the failure to reach a PPA providing below market prices to VT ratepayers clearly does not allow for a finding by the Board that the continued operation of VY will provide the economic benefits to the State of Vermont required for a showing pursuant to 30 V.S.A. § 248(b)(4) that the Petitioner is entitled to a CPG.

This is a direct mischaracterization of the Department’s position on criterion 4. For more details, please see section III.C. above responding to a similar mischaracterization by VPIRG.⁶¹

⁶⁰ DPS Brief at 52-53. NEC also ignores the testimony of witness Thayer on behalf of Petitioners where he agrees that Petitioners should not be allowed to use such transactions to avoid liability under the RSA, and that an audit process should be in place to ensure that all appropriate value is captured by the RSA. Tr. 5/21/09 at 40-43.

⁶¹ Pages 23-25, *supra*.

D. Closure of VY will not drive the development of renewable generating facilities to “fill the gap.”

Without any supporting proposed facts or citations to record evidence, NEC contends that closure of VY “will incite the creation of renewable generating facilities, such as wind farms, to fill the gap. This will provide jobs and economic stimulus across Vermont, and further provide for alternative low or no carbon emitting electricity generation that would be consistent with the Vermont Energy Plan.”⁶² What the record really shows is that the presence of VY in Vermont has no impact on whether renewable projects come on line or whether a renewable energy sector develops in Vermont’s economy. Renewable energy projects are either built or not built based on the economics of a specific proposal and the decision will not be influenced by Vermont Yankee’s operation or closure.⁶³ Additionally, common sense dictates that the presence of VY does not present an obstacle to development of a renewable energy industry in Vermont. The market for renewable energy infrastructure (e.g. wind turbines) is worldwide. There is nothing about Vermont Yankee’s presence, or absence, that would dictate whether a manufacturer of renewable energy infrastructure would or would not locate in Vermont. Lastly, the presence of baseload facilities such as VY actually support the existence of renewable energy projects. The intermittent nature of renewable energy facilities means they cannot be relied upon to serve the same demand that VY serves. Rather, the presence of

⁶² NEC Brief at 7-8.

⁶³ Tr. 5/18/09 at 115-16 (Tranen); Nagle pf. 2/11/09 at 11. It should also be remembered that renewable projects tend to be intermittent in nature while VY is a baseload facility; meaning the power produced by each has different characteristics and thus, at least to some degree, different markets.

baseload facilities creates the opportunity for renewable energy projects and the either/or proposition advanced by NEC is unfounded.

E. The Board should reject NEC's proposed finding 117.

NEC's proposed finding 117 reads:

DPS witness Lamont made it clear that the risks associated with operating Vermont Yankee on an extended license are more certain than the benefits. Tr. 6/3/09 at 51 (Lamont).

The Board should reject this finding because it ignores further explanation by witness Lamont regarding the costs and benefits associated with shutting down VY versus allowing an extended period of operations. On redirect, Mr. Lamont explained that at least some of the principal risks referenced in proposed finding 117 are risks that exist even if the plant is shut down in 2012, such as storage of SNF on the banks of the river and the plant remaining on site in a contaminated condition while a period of SAFSTOR runs until there is sufficient money to decommission the facility.⁶⁴ And, if the plant is shutdown in 2012, the benefits associated with plant operations would cease in their entirety.⁶⁵ As a result, what is certain is that risks will be present even if the plant is shut down in 2012, yet there will be no offsetting benefits that would otherwise be realized in an extended operations period. The Board should reject the proposed finding.

⁶⁴ Tr. 6/3/09 at 143-44 (Lamont).

⁶⁵ *Id.*

VI. Correction to DPS proposed finding 64

In the DPS Brief, the Department proposed the following factual finding 64:

If a CPG is granted to Petitioners, a second ISFSI will need to be constructed at some point in the 20 year CPG period to accommodate any slippage of the shipment of SNF in the best of scenarios. Mullett pf. 4/24/09 at 7.

Upon further review, the proposed finding does not precisely reflect the testimony cited.

Accordingly, the Department proposes the following as a substitute for finding 64 in the DPS Brief:

The three-year slippage from 2017 to 2020 in the earliest possible date assumed for the first shipment of SNF to a Yucca Mountain repository requires the construction of the second ISFSI in order to accommodate the spent fuel remaining in the storage pool after the necessary cooling period in both DECON and SAFSTOR license renewal decommissioning scenarios. Mullett pf. 4/24/09 at 7.

CONCLUSION

For the reasons discussed herein, and in the Department's initial Brief, the Board should adopt the findings, conclusions and conditions proposed by the Department and should reject any contrary findings, conclusions and conditions proposed by other parties.

Dated at Montpelier, Vermont, this 7th day of August, 2009.

VERMONT DEPARTMENT OF PUBLIC SERVICE

By: _____
Sarah Hofmann, Director for Public Advocacy
John Cotter, Special Counsel

cc: Service List